HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 142 of 2001

Aliram

Vs.

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI V.K. SHRIVASTAVA,J

I agree

Sd/-
V.K.Shrivastava
Judge

POST FOR JUDGMENT ON 14 NOVEMBER 2006

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRIMINAL APPEAL No. 142/2001

Appellant: Aliram, Son of Shri Tetkuram, aged about 38 years, R/o. village Jagtara, P.S. Balod, Distt. Durg (C.G.)

Versus

Respondent: State of Chhattisgarh, through P.S. Balod, Distt. Durg (C.G.)

CORAM: **DB: HON'BLE SHRI V.K. SHRIVASTAVA & HON'BLE SHRI DHIRENDRA MISHRA, JJ.**

PRESENCE

Dr. N.K. Shukla, Sr. Advocate with Ku. Ritu Mishra, Advocate for appellant Aliram.
Shri G.D. Waswani, Addl. Public Prosecutor, for the State.

JUDGMENT

Per Dhirendra Mishra, J.

The appellant has preferred this criminal appeal under Section 374(2) of the Code of Criminal Procedure against judgment dated 9-1-2001 passed by learned Additional Sessions Judge, Balod in Sessions Trial No. 88/99 whereby after holding the appellant guilty under Section 302 of Indian Penal Code for causing death of his wife Bhagvantin Bai, he has been sentenced to undergo imprisonment for life.

2. Allegation against the appellant is that on 9-6-1998 at about 00.30 hrs. past midnight, the appellant killed his wife by throttling. Report of Ex. P-6 of the incident was lodged by the appellant himself on 9-6-1998 at about 08.30 a.m. On the memorandum of Ex. P-1 of the appellant, dead body of the deceased Bhagvantin Bai was recovered from agricultural field of Naresh Vishwakarma vide Ex. P-2. Inquest of Ex. P-3 of the dead body was prepared in presence of witnesses. The dead body of Bhagvantin Bai was sent for autopsy to Government Hospital, Balod where Dr. Anil Agrawal (P.W.10) conducted post mortem and submitted his report of Ex. P-5. Site plan of Ex. P-9 was prepared by Station House Officer after completing investigation. Charge-sheet was filed in the Court of Judicial magistrate First Class, Balod who in turn committed the case to the Court of Sessions Judge, Durg and the

same was received on transfer for trial by learned Additional Sessions Judge, Baiod.

3. Charge under Section 302 of I.P.C. was framed against the appellant who abjured his guilt.

4. The prosecution in order to establish charges against the appellant examined 11 witnesses in all, thereafter statement of accused was recorded under Section 313 of Cr.P.C. in which the appellant denied the circumstances appearing against him and pleaded innocence and false implication. He has stated that he had gone to Police Station to lodge missing report of his wife and has expressed his suspicion on Rai Singh, however he has been falsely made accused in the above crime. After hearing the counsel for the appellant and the Additional Public Prosecutor, the learned Additional Sessions Judge convicted and sentenced the appellant as mentioned above.

5. Homicidal death of the deceased Bhagvantin Bai is not in dispute. Even other wise, from statement of P.W. 10 Dr. Anil Agrawal and post mortem report of Ex. P-5, in which he has found abrasion over left elbow, left shoulder, three abrasions on the back, abrasion on the left forearm, left side of index finger, right elbow and arm and right shoulder, 2 abrasions were also spotted over right scapular region, 5 abrasions of different sizes were found over neck, the Doctor opinioned that except the abrasions found on the neck, all other abrasions were caused by hard and rough object whereas the abrasions on the neck could be caused by application of force through hand and on internal examination, he found all the parts of the body congested and noticed frothy material in trachea, which was swollen and the Dr. has opined that the lady died due to cardio respiratory failure as a result of asphyxia caused by throttling and the same was homicidal in nature, homicidal death of deceased Bhagvantin Bai is established.

6. Learned counsel for the appellant submits that there is no eye-witness to the incident. Body of the deceased was found from open field. However, the Court below has convicted the appellant on the basis of circumstantial evidence and the circumstances relied upon by the Court below

are circumstances of last seen, the report of the incident was lodged by the appellant, the body of the deceased was recovered on the memorandum of the appellant. It is argued that all the circumstances relied upon by the trial Court have not been proved. The finding of last seen is based on the statement of Ku. Lalita (P.W. 7) a child witness and daughter of the appellant and the deceased though this witness has stated that when she left her home for grand mother's house, her mother and father were in the home and in the next morning, she learnt that her mother is dead and admittedly the body was found from the filed. Counsel further submits that reliance has been placed on recovery of the dead body on information of the appellant however, from the evidence of the witnesses, it is evident that dead body of the deceased was seen much before the same was recovered by the police and the body was found from open place and the motive has not been established.

7. On the other hand, learned counsel for the State has supported the judgment of the trial Court. Placing reliance in the matters of ***Aghnoo Nagesia -v- State of Bihar*** reported in ***AIR 1966 SC 119,*** it has been submitted that the first information report lodged by the accused himself can be used for the purposes of identifying the accused as the maker of the report and the same may be used as provided under Section 27 of the Evidence Act.

8. We have heard learned counsel for the parties. We have also perused the impugned judgment and ocular and documentary evidence available on record.

9. Conviction of the appellant is based on circumstantial evidence. The circumstances replied upon by the trial Court for convicting the appellant may be summarized as under:-

i. The appellant had seen his wife being raped and thereafter he was not happy with her and in the night of the incident, the appellant was seen in the company of the deceased in his house for the last time together and thereafter her dead body was recovered from the field;

ii. Report of Ex. P-6 was lodged by the appellant;

iii. On the basis of information of the appellant, police registered the offence and proceeded for investigation to the place of occurrence;

iv. On the memorandum of Ex. P-1 of the accused, dead body of the deceased was recovered from the field of Naresh Vishwakarma.

10. So far as the first circumstance is concerned, it is not in dispute that the appellant witnessed the incident of rape with his wife. P.W. 6- Rattiram has stated that after the incident of rape, the appellant refused to keep Bhagvantin Bai with him and had left her in his house and thus it is clear that the appellant was not happy with the deceased.

11. So far as the second circumstance is concerned, P.W. 7 Ku. Lalita- daughter of the appellant and the deceased has categorically stated that on the date of incident, she along with her brother and sister went to nearby house of her grandmother for sleeping leaving behind her mother and father in home and in the next morning when she returned, she learnt that her mother is dead. The fact that in the night of the incident, the deceased was seen in the company of the appellant in their house when she was alive by Ku. Lalita has not been challenged and in the same night at about 00.30 past midnight, the deceased was done to death in the agricultural field of Naresh Vishwakarma. This is a very strong circumstance against the appellant and the appellant has not explained under what circumstances, the deceased left his company in the night of the incident.

12. So far as the third and fourth circumstances are concerned, it is not in dispute that the appellant had lodged the First Information Report in the Police Station and on the basis of his report, the offence was registered and police proceeded for investigation to the scene of occurrence. The appellant had tried to take a defence that in fact he had lodged a missing report in the police station expressing his suspicion on Raisingh, however, the explanation offered by the appellant is on the face of it false as the appellant has failed to explain the circumstance under which the deceased left the house in the night of the incident after he was seen in her company by his daughter Lalita.

P.W. 11- B. K. Datta-the Investigating Officer has stated that memorandum of the appellant of Ex. P-1 was recorded by him and the appellant had informed that he has left the dead body in the filed and took him to the field where recovery memo of Ex. P-2 of the dead body was prepared. P.W. 1- Chaitram has admitted his signatures over Ex. P-1 and Ex. P-2, though he has stated that the appellant did not make any statement regarding recovery of the dead body but in para 5 of his cross-examination, he has denied the suggestion that his signatures were obtained in the document without reading. Similarly P.W. 2 Vishnuram who is also witness of documents Ex. P-1 and Ex. P-2 has stated that on interrogation, the accused had confessed his guilt and had gone with the police for the purposes of recovery of the dead body. In the cross-examination in para 5 by the Court, this witness has categorically admitted that the appellant had led the police to the field from where the dead body was recovered. Similar is the statement of P.W. 3 Chandra Gupt who is also the signatory of Ex. P-2 of the recovery memo of the dead body. This witness has also stated that Aliram had informed the police persons about the dead body and he had taken the police and then the dead body was recovered. Thus from the statement of P.W. 11, which is corroborated by P.W. 1 Chaitram, P.W. 2 Vishnuram and P.W. 3 Chandra Gupt on material particulars, the factum of recovery of the dead body at the instance of appellant is established.

13. On the basis of aforesaid analysis, we are of the considered opinion that the prosecution has proved the charges against the appellant beyond all reasonable doubt with the help of circumstantial evidence as described above and the Court below has not committed any infirmity or illegality in holding the appellant guilty and convicting and sentencing him under Section 302 of the I.P.C.

14. In the result, the appeal preferred by the appellant is devoid of substance and the same deserves to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge
14-11-2006

Sd/-
DHIRENDRA MISHRA
Judge
14-11-2006